# McMillen's Monograph on International Peace

# A MONOGRAPH

ON

# INTERNATIONAL PEACE

INVOLVING COMMENTS ON THE

# INTERNATIONAL POLICE POWER,

# FORUM and PROCEDURE

BY

LISTON McMILLEN

COUNSELLOR-AT-LAW

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# PREFACE.

*This monograph is written as an humble contribution to the international peace literature; and is prompted by the assurance in the sacred writings that the time shall come when "nation shall not lift up the sword against nation"—an exceedingly precious promise, full of encouragement to optimistic faith and effort. The sacred promises, however, are all conditional. Among these conditions are that we must do our part, and work together with God. We must do what we can to bring the promised blessing about—help answer to our prayers.*

*The divine plan of salvation is through knowledge of the truth. "Ye shall know the truth and the truth shall make you free." It has accordingly seemed to the writer that a discussion of the leading basic principles of international jurisdiction might aid in the evolution of international truth and be helpful in the cause of international peace. In this spirit this little treatise is written and submitted to workers in this great cause.*

*BY THE AUTHOR.*

*Oskaloosa, Iowa, U. S. A. July, 1905 A. D.*

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# INTERNATIONAL PEACE.

## CHAPTER I.

### INTERNATIONAL LAW

SEC. 1. *Definition and Distinction.*—International law is the law of the space between nations. It not only relates to the sea, but also to all space on land where there is no recognized national sovereignty. It is not a law over nations; for each sovereignty is supreme in its national jurisdiction; as to speak of a superior to supremacy, would involve a contradiction in terms.

International sovereignty, therefore, in no manner infringes upon nationality. Every recognized sovereign in his own territorial limits is independent of the dictation of any foreign potentate whatever. In the study of this subject, the independence of national sovereignty should always be kept in view and all else be made to harmonize with this truth.

SEC. 2. *No Vacuum in Sovereignty.*—International law springs out of the thought that a sovereignty of some kind exists everywhere. It is as universal as the air we breathe. That is to say, there is no space or spot on this planet, where the right to declare and enforce law does not exist in somebody.

The jurisdiction over the sea is that of joint-sovereignty—each national sovereign being *ex-officio,* one of the joint-sovereigns of the sea; while on the other hand, within his territorial limits, his sovereignty is in severalty.

International sovereignty over the sea is permanent. But on land it is only temporary; for it becomes dormant whenever national organization is developed in the given international space. But in either event a sovereignty of some kind, either national or international, exists wherever man is found.

SEC. 3. *The Origin and Nature of International Law.*—There are no international statutes; nor written constitutions. International law was born and not made. It came in to the world like the common law that inheres in nationality. The common law of a nation is simply the unfolding of the golden rule, within its territorial limits. The international common law is simply the application of the same rule to international space.

Practically speaking, the common law, whether national or international, is simply the conscience of the judiciary as applied to the facts of the given case. The judicial conscience enlightens itself by reason and precedent. Where there is no precedent it makes one. Where there is precedent, it generally follows it.

A precedent ancient or often repeated is allowed to enlighten the conscience, sometimes, when as an original proposition a different view might be adopted. And this is upon the principle of *stare decisis;*

which is based upon the idea that settled rules best conserve the rights of men. It sometimes happens, however, that an ancient precedent works so great injustice that the court ignores or overrules it, and carves out a new path for itself.

In every common law problem whether national or international the sole inquiry of the judge in the case is: *What is the truth?* And the decree is simply the reflection of the degree of enlightenment of the judicial conscience as to the truth of the case. Sometimes it is a question of fact. At other times the dispute is as to what is the law applicable to the conceded or established facts. But in all cases, when the judgment is pronounced it is simply the expression of the conscience of the judge. So that international law may be said to be the sense of right of the international judiciary as applied to the facts of the given case.

The common law then, whether national or international, is not judge-made. It is merely judge-evolved. This evolution is a process that will never end as long as changes occur in the affairs of men. *Circumstances alter cases.* The facts of the case are the bed. The common law molds and adapts itself, like molten lead, to the facts, and new phases of the law will appear as long as new facts appear.

All the law and the prophets hang upon the law of love to God and man; and this law was not made. It was evolved by the Son of God from the everlasting divinity within Him—the heart of the Supreme Ruler, that ordained the powers that be.

SEC. 4. *The Monroe Doctrine.*—An important step in the evolution of international jurisprudence occurred, when President Monroe announced the doctrine bearing his name. There were at that time in South America large areas, where there was no local government; and also other spaces where the national governments were so weak as to be merely nominal; or so venal and violent as to be worse than nominal. In all such regions international jurisdiction attached upon the principle that there is no vacuum in sovereignty; and accordingly in certain portions of these international spaces, the monarchs of the old world proceeded from time to time to organize local governments; and this was done without consulting the United States in such cases, our assent being assumed or implied from acquiescence.

President Monroe, however, finally took the position, that, without in any manner invalidating what had been done, no such absorption of territory there should occur in the future without the express assent of the President of the United States, as one of the International Judges in the vicinage; and that at least as a general rule, thereafter the United States was to be understood as dissenting from such absorption whether by the so-called right of discovery or by conquest. It should, however, be distinguished that the United States never claimed any protectorate or right of supervision over any recognized nationality in South America, nor of any European colony developed there. The American right of intervention exists only where international juris-

diction exists. It should be further distinguished that the Monroe Doctrine does not affirm the exclusive right of the United States to intervene in the international affairs in South America. All other nations have the same right to a voice in such international matters. The difference is that many of them have little or no interest in the questions presented there and they consent by acquiescence to what is done. While on the other hand, the policy of the United States is that its interests are so great by reason of vicinage that it proposes to exercise an active voice in the determination of all international matters in that continent.

This does not mean that the American Government proposes to intervene in all controversies between European and South American Sovereignties, but only in such matters as relate to international space.

The writer does not understand that, if the majority of the nations of this world should unite upon a measure, affecting only some given international space, in South America, the United States would nullify such an international decree. Our remedy would rather be to wait for conversion to our views, feeling confident that in time the truth will prevail. In the proper connection these subjects are more fully discussed and the reader is referred to what is there said. Suffice it for the present purpose to say that the Monroe Doctrine is not a cloak for inefficiency, insolvency or iniquity. The international remedies in such cases are ample as we shall presently see.

SEC. 5. *International Courtesy.*—An important international principle is the quality of courtesy. As already suggested and hereafter more fully seen, all nations have the right to a voice in the settlement of all international matters. The courteous recognition of this truth, in each and every case, would, at least as a general rule prevent war between nations and in all cases, be a powerful ally of peace. Secretary Hay, in two recent instances, demonstrated the power of this quality, in the success of his two courteous notes to the Powers in relation to China. The consensus of international opinion thus courteously ascertained carries with it such weight as to command the respect of both belligerents in Manchuria. It is possible that if we had exhibited this same courtesy in regard to Cuba, the Spanish-American war might have been averted. As elsewhere suggested Spain could have bowed in submission to an international decree, participated in by all nations, without infringement upon her national honor, and doubtless would have done so. On the contrary, however, we arrogated to ourselves the task of settling that international matter, resulting in great cost of blood and treasure and unexpected responsibilities. If we undertake to excuse this arrogation as to Cuba, on the principle of vicinage, it will not avail as a plea, as to the Philippines. We started out to pacify Cuba. The Philippines, however, at that time, did not need pacification. The Archipelago was quiet. There was no rebellion there. The civil authority was supreme. President McKinley, in the first instance,

gave no order to invade Manila. The order of Secretary Long to Admiral Dewey was merely to find and destroy the Spanish squadron. This order was executed, and then without any authority from Washington, Admiral Dewey declared a blockade of Manila. The destruction of the Spanish squadron destroyed the naval prop of the civil authority at Manila and reduced it to a mere nominal condition; and the underlying dormant international jurisdiction at once sprang into life throughout the Archipelago. Admiral Dewey overlooked this international phase of the situation and arrogated to the United States the sole control there and established the blockade accordingly.

SEC. 6. *A Case in Point.*—Now let us note the peril of international complication through failure to exercise the quality of international courtesy. Soon after the blockade at Manila was declared by Admiral Dewey a number of other war ships of other nations came there, including five from Germany, two of which were armored vessels. The German commander took a more active interest in the situation than the other Powers which is described in Lodge's History of the War with Spain, pages 195-197 as follows: "There was one power present who pushed her hostility from thoughts and words to action. This power was Germany. She had no especial claim to be there, no large or particular interests, but she sent more ships than any other power, kept on meddling and went to the verge of war. The Germans broke through Dewey's regulations, which he had the right to make and he

called them sharply to order. They would violate the rules by moving about at night and then the American search lights fell with a glare upon them and followed them about in a manner which checked and annoyed them. One German ship put out her lights and tried to slip in at night, but a shell across her bows brought her to. Another made herself offensive by following and running close up to our transports when they first arrived. A German ship went up to Subig Bay and prevented the insurgents from taking the Isla Grande. So the Raleigh and Concord went up too, stripped for action and as they went in, the Irene went out and the Americans took Isla Grande. Very trying all this to a man charged with great responsibilities and seven thousand miles from home. There must be no haste, no rashness, nothing that could give his opponents a hold and yet there must be no yielding and no threat except with action behind it and a provocation which the whole world would justify. Every annoyance, every improper movement was quickly checked. The diplomacy was perfect. Then came the sufficient provocation and the teeth were shown. To the vigilant admiral the opportunity came at last when one of the German vessels was proved to have landed provisions in Manila."

Admiral Dewey at once gave his flag-lieutenant the following verbal order: "Take the barge and go over to the German flagship. Give Admiral Von Diederick my compliments and say that I wish to call attention to the fact that vessels of his squadron have shown an extraordinary disregard of the usual

courtesies of naval intercourse and that finally one of them has committed a gross breach of neutrality in landing provisions in Manila, a port which I am blockading. Tell Admiral Von Diederick that if he wants a fight he can have it right now." Thereupon the German admiral became sorry for what had happened and it appeared did not know what his captains had been doing—a sad reflection upon German discipline. But it seemed that though he had two armored ships and Dewey none he did not desire a fight and the meddling abated sensibly."

Now according to this record Admiral Dewey appealed to the law of international courtesy and by this same law he should be judged. We should remember at that time international jurisdiction attached to or existed in the Philippines for two reasons. (1) When the Spanish navy was destroyed in the Manila Bay the prop of the civil authority in those islands was taken away, as suggested in the last section, and the local government was reduced to a mere nominal state—a condition which, as we shall hereafter see, justified international intervention, under what is known as international police-power.

(2) The heir of the Spanish Kingdom was an infant and his heritage was a proper matter for international tutelage. It was accordingly the duty of the international police-power to conserve his estate. Instead of declaring and waging war upon him, we should have held that the Spanish regency the mere vicar of the infant King, had no right to declare war and thus jeopardize and waste the estate

of this international ward and the so-called Spanish declaration of war should have been treated as a nullity and the authority of the regency in all the Spanish dominions subject to be superseded by international intervention. Upon both of these grounds international jurisdiction existed in the Philippines and accordingly the navies of England, France, Germany and Japan, as well as our own navy, were all rightfully there and all equally entitled to a voice in the management of the governmental affairs of Manila. Admiral Dewey, however, assumed the exclusive governmental prerogative there and without any authority from Washington declared a blockade of Manila and proposed to fight the German navy, because it simply exercised the plainest international right, viz: to succor the needy in international jurisdiction by delivering provisions to them. If by authority from Washington Admiral Dewey had issued a proclamation annexing the Philippines to the United States and our jurisdiction there had become recognized by a majority of the nations of the world, then we would have had the national right to exclude Germany from a voice in the case. Until then we could have no national jurisdiction at Manila and could only act under international jurisdiction; in which case, the treatment of Germany, one of the international intervenors in the case, constituted international discourtesy; for all the intervening powers had as much right there in the exercise of the international police-power as the United States. The marvelous forbearance of Germany under the

circumstances is highly to be commended. Unless our discourtesy is barred by lapse of time, we owe Germany an apology and should salute the German flag; and this should be done to emphasize and vindicate the underlying principle of international equality involved in the case, a subject hereafter more fully discussed.

SEC. 7. *An Example of True International Courtesy.*—By reason of the Boxer insurrection the frail dynasty of China was overthrown and all foreigners there were in great peril. International jurisdiction attached to China as soon as local government disappeared or become inefficient. We however did not arrogate to ourselves the exclusive prerogative of intervention for purpose of Chinese pacification. But in marked contrast with our course in Cuba and the Philippines, the United States, united with the leading Powers of the world. England, Germany, France, Russia and Japan in the intervention and by military force quelled the insurrection and restored the government. This action on the part of President McKinley was simply an advanced step in international evolution—the mere blossom or logical sequence of the Monroe doctrine. The legal right to intervene in China existed the same as in South America, and he conceived that commercial as well as humane grounds would justify intervention on his part; but he realized that the other Powers of this world had the same legal right there as himself and courteously united with them in the intervention. He did not follow the precedent set at Manila and blockade the

ports of China and propose to fight the other Powers for landing provisions for some of their suffering countrymen or friends. Darkness, bitterness and the closed door reigned at Manila. Light, concord and the "open door," set in in China and has prevailed there until the present day, being recently augmented as already suggested by the marked success of the two courteous notes of Secretary Hay to the Powers—the consensus of international opinion thereby elicited being amply sufficient to reserve the Chinese territory from the theatre of the Russo-Japanese war.

SEC. 8. *International Police-Power.*—National Police is the right and duty of internal regulation of a nation, including the promotion of its welfare and peace and prosperity. Police inheres in sovereignty and really denotes the right of sovereignty to self-preservation. It was under this power that President Lincoln proceeded to coerce peace in the South, without waiting for congress to take action in the matter.

A trace of this power had previously exhibited itself when President Washington sent troops into Western Pennsylvania to quell the "Whiskey Rebellion." Under this power, President Cleveland, ordered his soldiers to disperse the mob growing out of the strike in Chicago—the preservation of peace in his jurisdiction being of the very essence of his sovereignty. International police is the correlative of national police and denotes the right and duty to conserve the peace in all international space, including the sea. The right to exercise this power

does not depend upon statutes or treaties. It inheres in international sovereignty; which comes into the world as the logical concomitant of national sovereignties and correlated thereto not by dominion over them but by sustenance from them, involving the same general purpose of peace and good will to men.

SEC. 9. *International Jurisdiction.*—No sovereign can exercise police-power except within his jurisdiction, i. e., he and the subject matter of his orders must be in his own national limits or within his international limits, which comprise all international space, including the sea. When a sovereign goes out beyond his jurisdiction, both national and international, to exercise sovereign functions his orders are void and he is a disturber of the peace of that realm, whose territorial limits are thus invaded. (See on this point Bishop's Criminal Law, Vol. 1, Sec. 122.) (See also Sec. 20 of this Monograph.)

SEC. 10. *The Law of Peace.*—The sea is the world's highway. It's waves wash the shores of all nations, making communication between any two possible without the intervention of a third nationality. The sea is essential to national life—independence of intercourse being of the essence of nationality in the full sense of that term. There are bodies politic like Switzerland without independent access to the sea—being in the material respect of intercourse virtual dependencies and hence are only quasi-national. The sea then is the world's highway and the law of the highway is the

law of peace—every man being entitled to the the peaceful use and enjoyment thereof. And hence the essence of all international law is comprised in the one thought—the peace of the sea—the world's highway. Whoever violates this peace may be dealt with by international processes which in the following chapters will be briefly considered.

## CHAPTER II.

### THE INTERNATIONAL JUDICIARY.

SEC. 11. *Existence Implied.*—We have seen in the preceding chapter that international law exists. Now it is manifest that the existence of law implies that there is a judge of that law; for unless there is some one having authority to declare the law, we cannot predicate the existence of the law. That is to say, as already explained, law is simply the exercise of the judicial conscience as applied to the facts of a given case—this conscience being more or less enlightened by reason and precedent. The existence then of international law implies the existence of an international judiciary—a word derived from the Latin *judico—I speak the law.*

SEC. 12. *Membership and Franchise.*—Whoever is charged with the conservation of the *peace of the sea* is *ex-officio* a judge of the law of the sea, the essence of all international law. In practice we find that the Chief Executives of the nations of this world are commanders-in-chief of their respective navies and hence each of them is *ex-officio* a member of the international judiciary. They are *ex-necessitate* joint sovereigns of all international space, including the sea, and consequently constitute the International Court. In the absence of any rule or convention to the contrary any one of them

constitutes a quorum, and the Court is always in session, having as yet no stated terms.

Any sovereign of full age and sound mind is entitled to a voice in international adjudication, and the vote of the sovereign of the smallest nation has as much legal force as the vote of the sovereign of the largest nation; for they are both equally entitled to the use and enjoyment of the sea—the basis of all international jurisprudence. The rich owner of an expensive automobile has no greater right to the highway than his poorest neighbor with the humblest vehicle—each must give half the road and are equally required to observe its peace. And so in the divinely ordained highway between nations, all the Powers, large or small, are equal; as much so as the members of the United States Senate or British House of Lords, notwithstanding differences in size of constituencies or wealth of members. The International Peerage is inherent, and cannot be denied; for whenever a nation loses the right to the use and enjoyment of the sea its nationality perishes also---this right being of the essence of nationality, for without it free and unrestrained diplomatic intercourse cannot be had. Such a nation is like a farm without any highway.

SEC. 13. *Majority Rule.*—It would seem that the opinion of the majority of the international judges must finally prevail in international adjudication. If the minority ignores the ascertained views of the majority it virtually impeaches or expels from the international judiciary the majority or at least a sufficient number to convert the

minority into the majority. The contest then would turn on the question as to who constitutes the court. Pending its settlement there would virtually be no international court and conseqeuntly no international law; for as already seen where there is no court there is no law.

The only possible escape from such a dilemma is the recognized rule of the majority. Whoever ignores, opposes or rebels against it advocates international chaos.

It is neither wise nor necessary to antagonize by force of arms the faith of the majority of the recognized sovereigns, fairly formed and freely expressed; but rather wait for conversion to our views. In due time men will reach the truth.

If, however, the American President is satisfied that the view expressed by the majority is insincere, i. e., springs from chicane or duress; then the remedy as hereafter more fully discussed is to withdraw recognition of any and all such monarchs thus found worthy of impeachment; and the views of the remaining judges would constitute the opinion of the international court.

This remedy by impeachment should however be the last resort. Time and patience will generally obviate it. If we meet with defeat in the International Forum today we may win, if we are in the right, by changes later on in the personnel of the court arising from death, resignation, and other causes. Such things have happened ever since the vicissitudes of Joseph through change of Pharaohs.

One of the most remarkable instances of this

in national jurisprudence in modern times was the validation of the Legal Tender Act, during the administration of President Grant by the addition of two new members to the Federal Supreme Court thus converting the minority into the majority. So that we should always remember that time and patience in the exercise of abundant charity are hand-maids of international peace. The world's decision may be wrong today; but it will right itself tomorrow by conversion or change of personnel.

SEC. 14. *International Tutelage.*—All law of which we have any knowledge has involved in it the modifying force of tutelage; and we shall see that international law presents no exception to the rule.

It would indeed be very strange if we could not trace the quality of tutelage, in international jurisprudence. Upon principle it would seem that a monarch who is an infant or a dotard, or insane would not be entitled to a voice in any international adjudication. His right in this respect seems to be in abeyance.

The reason for this view is that the sovereign in tutelage is only nominal, and international jurisdiction attaches to the territory involved; under which regency springs up by sufferance of the International Police-Power; although there is in some cases quiet intervention and supervision, by some one or more of the Sovereign-Judges, especially from the vicinage.

The regent is only the vicar of the king and

is at all times subject to international intervention and supervision.

The International Court, however, is a court of Sovereigns, and not a court of vicars, secretaries or prime ministers; and being the highest tribunal in the world is ex-necessitate, judge of the qualification of its own members; and tutelage being inconsistent with the independence of the International Judiciary, logically requires the court to exclude the nation affected by it from any voice, vote or participation in any matter addressing itself to the International Judicial Conscience.

The exclusion, however, does not relate to purely ministerial matters. It only relates to judicial matters, where questions of international fact, law or adimnistration are to be determined.

If the President of the United States should become insane, all ministerial matters would proceed uninterruptedly through the various departments; but until he should be removed by impeachment and his successor inducted, we would be without representation in the International Court—and accordingly subject to international jurisdiction, intervention and supervision. To illustrate:

Suppose our President should become insane during the Congressional vacation and the Secretary of war should assume the prerogative to order our army to invade the British Domain; the King of England would have the undoubted international right to intervene in the United States, and appoint a ruler for us who would countermand the usurper's order until Congress should assemble and take ac-

tion in the matter. This seems to be the logical deduction from the intervention of President McKinley in Cuba, and his establishment of a temporary government pending the development of a permanent government in that island.

The importance of this method by intervention in the exercise of international police-power will be considered later on, in the section on the distinction between intervention and invasion.

The subject is merely referred to here to point out and explain that international jurisdiction springs up into life and activity in all cases when the governmental condition of a nation is ripe for tutelage.

SEC. 15. *The Rudimentary Nature of the International Court.*—The International Court is exceedingly rudimentary as at present developed; and so informal as to make it difficult to trace the judicial quality inhering in the disposition of a given case. So much so, in fact, as to cause many of the advocates of peace to doubt its existence, altogether, and to plan for the creation of an Internationl Court by a practically universal treaty.

The belief of the writer, however, is that the court already exists and is in operation; and all that is needed in the matter is the formulation of its rules of procedure by convention of the International Judges.

As already seen the consensus of opinion of a majority of the International Judges, taking part in a case, must finally prevail in its settlement, judicially. But at present the method of ascertaining

this consensus of opinion is exceedingly crude and informal.

The situation is analogous to that of a number of joint owners of a large farm, where the business is done informally, without organization or assemblage. But by various means of communication they compare views and agree upon the operation of the farm—those near the scene of action taking a more active part, while those more distant or otherwise engaged consent by acquiescence, where more formal or express assent is not given.

In a manner similar to this, international matters of a judicial nature are frequently disposed of.

A case in point is presented in the recent history of Cuba, already referred to. When President McKinley declared that anarchy existed in that island and international jurisdiction had accordingly attached to that territory, he did not wait for express ratification or assent of sister nations; but he assumed his judicial finding in the matter to be confirmed by acquiescence of the entire world and upon the same principle took upon hmself the exclusive task of pacification and promotion of the new government.

While perhaps upon the principle of vicinage, we had a deeper interest in the matter than any other nation, at least sufficient to justify our initiation of the inquiry into the case, yet it would have been far better to have taken the express judgment of the entire international judiciary as to the jurisdictional fact as to the existence of anarchy, and if in the affirmative then to have procured the express

assent of the International Police-Power to the course we proposed to pursue; and to that end it would have been an exceedingly wise move to have called a conference of all nations to consider and determine the questions involved.

Spain could have bowed gracefully to the finding of such a conference upon the question of anarchy and war would have been averted; and there would have been the additional advantage, so frequently urged in this monograph, viz: Such a courteous recognition by the United States of the right of all the International Judges to a voice in the settlement of the matter would have done much to advance the International Forum out of its mere rudimentary condition.

The *Case of China,* however, served this excellent purpose and brought this great court more clearly to light.

The six leading Powers, England, Germany, France, Russia, Japan and the United States intervened there and suppressed the Boxer insurrection and brought order out of chaos. The intervention was not well organized and was more or less informal, but as already suggested it was effectual.

Without multiplying these illustrations, suffice it for the present purpose to say the International Court, as at present developed is simply a diamond in the rough. But this great and precious pearl of the world's peace exists. As the years come and go, it will be polished and brought to light and efficiency along the line of reason and precedent and we may hope will culminate with effulgence

through formal assemblage and promulgation of rules of procedure.

SEC. 16. *The Temple of Peace.*—If a district, say, six miles square, on our Atlantic coast should be dedicated to international jurisdiction and a Temple of Peace erected there surrounded with palaces for the sovereigns of all nations, respectively, it would facilitate international action, in that each ruler could attend an Annual International Conference there without departing from his own jurisdiction—an important consideration; for the reason that no sovereign can act officially when he is beyond his jurisdiction; and hence it is not desirable for the ruler of a nation to depart from his jurisdiction. For this reason no President of the United States has ever visited another nation. Some of them have gone possibly a little way out into our international jurisdiction of the sea; but no further.

Under this plan, however, our President could confer with every sovereign, without any of them acting or going outside of their lawful spheres of action.

The writer does not claim that an Annual International Conference of Sovereigns is absolutely essential to the world's peace; but it would undoubtedly be a most valuable expedient to that end —a vast improvement over the present crude and informal method of ascertaining the consensus of sovereign opinion as to international matters.

The temple proposed to be built by Mr. Carnegie at Hague would not meet the requirements

of the case; for, there is no district there washed by the sea, that could be dedicated to international jurisdiction; nor is any such dedication proposed.

When the Panama Canal is completed our Atlantic coast would furnish the most convenient district; and it is not too much to expect that sooner or later America will be glorified by such a Temple of Peace, devoted to a general assembly of all the sovereigns of the world—the real and only judges of the sea.

How this will be brought about does not yet appear. Some of our multi-millionaires may devote their fortunes for such purpose, either by will or in some manner before death.

What a gift to mankind and the cause of peace, if some philanthropist would devote one hundred million dollars to the erection of such a temple, surrounded with palaces suitable for the visiting sovereigns!

If not done in some such way as this, it will probably be accomplished in the process of time, by the combined effort of all nationalities—each contributing pro rota to the completion of the enterprise.

## *CHAPTER III.*

### *INTERNATIONAL INTERVENTION.*

SEC. 17. *Jurisdiction.*—We have already seen that the sea is under international jurisdiction. No one national sovereignty has exclusive jurisdiction over the sea. All nations have equal right to the use and enjoyment of the sea.

Thus far there is no difficulty in relation to the subject. But as to terra firma, the matter is not so clear.

In general, however, it may be said that international jurisdiction exists, wherever there is no officient local government, including all regions where local anarchy presents itself.

In some cases anarchy is self-evident—no government ever having been organized in the given space, or having entirely disappeared.

In other cases it is more or less disguised from view. The test in this latter class of cases, where there is appearance of local governmental organization is : (1) Insolvency; and (2) Chronic Injustice.

The symptoms of this last condition are mob rule, chronic violence and fraud.

In this latter class of cases the first question for the International Judiciary to determine is the jurisdictional fact as to the existence of anarchy. If it is found that anarchy does not exist, that ends

the international case. The remedy for wrongs, where an efficient local government exists is to apply to the local nationality and not to invoke international jurisdiction.

In determining the question of the existence of anarchy, two classes of symptoms should be distinguished, viz: (1) Anarchy de facto, characterized by insolvency and mob rule, conclusive evidence of impotence and mere nominal sovereignty; (2) Anarchy *de jure,* where the ruler himself is addicted to fraud, violence and general chronic wrong-doing. The legal maxim is that the king can do no wrong. Hence when these things present themselves, the law infers that there is no king and *de jure* anarchy is predicable of the situation.

There is still an other condition where as already suggested, international jurisdiction exists, viz: the quasi-anarchy, requiring tutelage, where the ruler is an infant, or insane or dotard. In all such cases it must be confessed that there is no fearless independent monarch.

If along any of these lines, the International Judiciary finds that international jurisdiction has attached to any given space, then, the sole problem presented is as to the nature and form of the government to be organized and fostered, by or under the patronage and assistance of the International Police-power inhering in the International Forum.

As soon as the new sovereignty in severalty is set in motion, the international jurisdiction ceases. All questions thereafter must be worked out through the local sovereignty.

The republics of Cuba and Panama are as sacred from any outside touch as the United States or England.

SEC. 18. *The Roosevelt Doctrine.* —A great service was done this world when President Monroe promulgated the doctrine bearing his name. A greater truth, however, was evolved in the last annual message of President Roosevelt, viz: That our rights under the Monroe Doctrine are based upon a world-wide international police-power.

He is the first ruler to formally proclaim the existence of this power. Others have done so by implication. But by coining the invaluable phrase, "international police-power" this message brings out the truth that international law has substance and is not a mere shadow or dream of enthusiasts.

He gives the subject express shape in the following language: "If a nation shows that it knows how to act with reasonable efficiency and decency in social and political matters, if it keeps order and pays its obligations, it need fear no interference from the United States. Chronic wrong-doing or an impotence which results in a general loosening of the ties of civilized society may in America or elsewhere, ultimately require intervention, by some civilized nation and in the western hemisphere the adherence of the United States to the Monroe Doctrine may force the United States, however reluctantly, in flagrant cases of such wrong-doing or impotence to the exercise of an international police-power."

This is a remarkable epitome of international

law and remedy as related to governmental decadence and dead or dying dynasties, viz: (1) The jurisdictional condition of anarchy; the symptoms of which are dissolution of the body politic, impotence and chronic wrong-doing: (2) The remedy by intervention in the exercise of international police-power; and (3) recognition of the principle of vicinage involved in such cases.

This message is an exceedingly valuable development in international jurisprudence and as we shall hereafter see, furnishes the world with a weapon, with which to banish war from this planet, if followed to its logical sequence.

(See Sec 8 for some further definition of International Police-Power.)

SEC. 19. *Quasi-Impeachment.*—Where there is no nominal local government, international jurisdiction attaches as a matter of course; for as already ascertained there is no vacuum in sovereignty and international sovereignty is always implied where there is no national organization.

But the more complex question arises where a nominal local government exists but is inefficient or corrupt.

In such case, as already seen, the remedy is to find, declare or adjudge the existence of anarchy and intervene under the resulting international jurisdiction.

This process of quasi-impeachment of a given sovereignty while drastic, yet is effective. One of the latest exhibitions of resort to this process, was the seizure of the customs of Venezuela by Great

Britain and Germany. The Venezuelan government seemed to be insolvent or corrupt. At least it did not pay its debts. The rulers of England and Germany treated the situation as one of practical anarchy and intervened there and seized the customs—thus temporarily establishing a new government; for the exercise of the tax-power is of the essence of sovereignty in any land. They would probably have made the government permanent, if the remainder of the civilized world had consented by acquiescence. But the United States in the exercise of her right to a voice in matters of International Police-Power, objected not to the finding of anarchy and resultant international jurisdiction, but to the form of the new government that was established in Venezuela. The matter was finally arranged to the satisfaction of the three international judges taking part in the matter, the King of England, the Emperor of Germany and the President of the United States by purifying, restoring and strengthening the former government to such an extent as to inspire the hope that it will meet its obligations. Whether this hope will be realized remains to be seen; as well as the future solution of the problems that may be there presented.

*The Vicinage.*—In the message referred to in the last section President Roosevelt recognizes the importance of the question of vicinage, involved in these international cases. His thought seems to be that ordinarily the intervention should be initiated by an Intervenor in the vicinage. But

he clearly recognizes the doctrine that this is not jurisdictional and the intervention may be instituted by any civilized nation. This justifies the recent joint intervention of the United States and other powers in China; and at the same time the right of a European nation to intervene in the western hemisphere is not denied; but the Monroe Doctrine simply serves notice that in all such cases the United States proposes to take part in the intervention and determination of the questions involved, on account of connection with the situation by vicinage. This doctrine finds analogy in the jurisdiction of the Federal Supreme Court in Habeas Corpus. Any of the justices or the Court itself may send the writ into any state in the Union; but in practice the applicant is referred to the justice assigned to his circuit—the reason being that convenience requires the question of vicinage to be considered, unless some good reason appears why this principle should be ignored in the given case.

And so where International Intervention is warranted, any nation in the exercise of a sound discretion, may disregard the question of vicinage and institute the intervention. But in all important cases it is certainly the part of wisdom to observe the principle of courtesy, by inviting all the International Judges to a conference as to the matter, to the end that those that consider themselves interested in the case may take a hand in the settlement of the issues involved.

SEC. 20. *Distinction Between Invasion and Intervention.*—The inviolability of sovereignty is

an axiomatic truth. That is to say, two sovereignties in severalty cannot occupy the same space at the same time, no more than matter can lose its impenetrability. It follows that a war of invasion involves a plain solecism. For one of the contending rulers in the invaded territory exceeds his jurisdiction. If the President of the United States should send his army into the British realm, it would pass out beyond his jurisdiction the moment it should cross the boundary line; and his orders in the foreign jurisdiction would be of no validity; for the reason that no officer has any authority outside of his jurisdiction. Both he and the subject matters of his orders must be within his national or international jurisdiction to give them legal efficacy.

It follows, therefore, that before our army could ever lawfully enter upon territory now occupied by a foreign power, we should first impeach the sovereignty of the alleged given ruler, either over the territory in dispute or his right to reign at all, and thus avoid the clash of sovereignties and the confusion incident to the involved illogical attempt to violate inviolability and penetrate impenetrability.

Invasion does not contemplate such impeachment and removal of the monarch reigning in the invaded territory. It simply involves the idea of killing and wounding an indefinite number of his subjects and more or less destruction of public and private property in order to cripple the resources of the invaded nationality. The animus is not to over-

throw the national sovereignty; for that would develop international jurisdiction—a contingency that belligerents often specifically seek to avoid, lest other nations should intervene, under the international police-power and end the war by a settlement not satisfactory to either of the original belligerents. Hence neither of them seeks the dethronement of the other. The idea is merely to kill and lay waste until one or the other sues for peace.

This consideration will enable us to see the fallacy of invasion. In all such cases the forces of the invader are beyond the jurisdiction of the invading sovereign, and he is a murderer and liable to indictment as such in the invaded nation. Intervention, on the contrary, has no thought of vengeance. Its only animus is that of peace and salvation; and to that end the inefficient government is impeached, and removed, by armed intervention, if need be, and a new government is organized or the old regenerated and re-established.

It should, however, be remembered that intervention has no legal basis until it is decided by the International Court (of which, as ascertained in Section 11, any Sovereign-Judge constitutes a quorum) that international jurisdiction has attached to the given territory, by reason of the existence of local anarchy, practically, at least, or substantially speaking. When this is found, then the intervening Sovereign-Judge does not exceed his jurisdiction in sending an armed force into the territory thus affected by anarchy; for while his army, it is true, passes out beyond his national limits, it is still with-

in his international jurisdiction and consequently subject to his orders, and the quality of invasion is not predicable of his procedure. In the light of this explanation we can truthfully claim that President McKinley did not invade Cuba. His procedure there was simply an armed intervention in the exercise of international police-power.

If he had recognized Spanish dominion in Cuba and sent his army down there, not to supersede, but to cripple and humble the government, and thereby avenge the Maine, then he would have been an invader. But that was not his animus. On the contrary, he declared that an "insufferable" condition of things existed in the island. This declaration of virtual anarchy in Cuba was an impeachment of the Spanish dominion there, before the world, and the world acquiesced in it; and under his resultant international jurisdiction he intervened for purposes of pacification and establishment of a new and efficient government. The entire proceeding was praiseworthy, except as already explained in Sec. 5, a courteous note to the Powers, inviting a joint intervention of all nations willing to sit in the case, would have avoided war; for Spain could have bowed gracefully to a general international consensus formally expressed, that her dominion in Cuba had degenerated into mere nominality and was practically effete; and it is morally certain that we could have secured such an expression; for the facts were patent.

President McKinley also technically escapes the charge of invasion of the Philippines. When

he destroyed the Spanish squadron, his navy was in his international jurisdiction of the sea. In the destruction of that squadron he crossed no boundary line of Spain.

The destruction of the naval prop of the local government, left it without adequate resource and exposed the Philippines to international jurisdiction as explained in Sec. 5 of this monograph. The rightfulness of our assault upon the Spanish navy is not now up for consideration. It is sufficient to say that for reasons satisfactory to him as one of the International Judges he ordered the destruction of the navy in Manila Bay, and as the consequence thereof, Manila passed into international jurisdiction and the subsequent advent of our army in the Philippines did not constitute invasion. It was simply intervention to protect the lives and property of the people there and ordain a strong government. Subsequently by treaty with Spain and the acquiescence of all other nations, the archipelago passed into the national jurisdiction of the United States. But in all this invasion is not predicable of the history of that matter.

In drawing this distinction the writer does not express any opinion as to the justifiableness of our assault upon the Spanish squadron in Manila Bay. The writer is not in possession of the facts that caused President McKinley to issue that order.

In this connection it should be noted, however, our nation as a rule, has never been swift to intervene in the affairs of other putative nations; for the reason that our policy has been as far as may be, to

foster all existing governments and thus keep their respective territories out of international jurisdiction. We now have a task of that kind on our hands in San Domingo. Unless something is done financially for that insolvent republic, that island must sooner or later pass under international jurisdiction. To prevent this and the resulting international intervention, it might be well for the United States to buy all the just bonds of that republic, and thus keep that little nation alive; for its one vote in the International Court might some time prove to be the casting vote of priceless value to the world's peace.

The greater the number of Judges in the International Court the better. "In the multitude of counselors there is safety."

Let us foster and promote as many distinct nationalities as may be; to the end that the membership in the International Forum may increase rather than diminish—remembering that invasion is the snake-bite that may so cripple a nation that it may languish and die and thus rob the world of one of its International Judges; while on the other hand intervention is the antidote for all national poison, working life and health and peace where otherwise death and dishonor reign.

SEC. 21. *Quo Animo.*—The test of a righteous resort to military force is the *quo animo*. If the purpose is that of intervention in the exercise of police-power in the interest of justice and peace and good government, it is praiseworthy and entitled to the prayers and sympathy of Christendom.

If, on the other hand, the purpose is that of invasion, for purpose of conquest or reprisal, then the use of the sea in furtherance of such design is undoubtedly a breach of the peace of the sea; and it would seem that the International Police-Power should interfere to prevent such breaches of international peace; and the offender should be required to desist or make amends, on pain and penalty of forfeiture of his throne.

We thus see that if there is any meaning to the phrase coined in the last annual message of President Roosevelt, "International Police-Power," there is ample power to banish war of invasion from the sea, and with the clipping of its naval wing this bird of prey will become extinct. In the ages to come the student of human cruelty will merely find its bones imbedded in some antiquated page of history and wonder at the ignorance and depravity that gave birth and sustenance to such a monster.

## *CHAPTER IV.*

### *ANCILLARY PROCESSES.*

SEC. 22. *The Process by Arbitration.*—International arbitration relates to matters occurring in the sea or on international space on land; and is not applicable to ordinary matters happening within the territorial limits of a nation. If a foreigner comes into the United States, he is entitled to the same protection of the law as our own citizens—no more, no less—and must take his chances along with them as to the adequacy of the protection. If he is injured by a mob or private assault the United States is not a party to the injury in such a sense as to justify international arbitration. It is only where international jurisdiction attaches that international arbitration is applicable. If violence should become chronic here, or if our government should maltreat a citizen of a foreign nation, the powers of this world might lawfully unite in tendering to us the alternative of intervention or repentance sufficient to avoid it; which should, of course, be evidenced by fruits meet for repentance.

The amount necessary for reparation and restoration to good standing among nations would be a proper matter for international arbitration.

But as long as a nation exhibits no anarchical taint and is in good standing among nations, its ability and integrity unquestioned, all matters aris-

ing internally among its inhabitants or visitors must be settled by national processes; for the reason as explained in Sec. 1, there can be no superior to supremacy and sovereignty denotes the supreme power in a given territory.

But all boundary disputes and all controversies relating to international space, including the sea, growing out of violence or otherwise, to which any nation may be a party, are proper matters for international arbitration; for in all these cases international jurisdiction exists.

In order to constitute arbitration in any proper sense there must be a court to which the award may be taken for review, confirmation and enforcement; otherwise the award is a mere *brutem fulmen;* and the power to confirm implies the correlative power of rejection, on the ground of either accident, fraud, mistake or duress; as this instrumentality devised in the interest of righteousness and peace should not be a shelter for manifest injustice.

All agreements, therefore, for international arbitration imply the existence of an International Court; otherwise such procedings are farcical.

Resort to this valuable ancillary process has developed slowly, because of the idea that the award is final; but as above ascertained, this is an error; and when the subject is generally understood in its true light, the prejudice against arbitration will disappear.

It should always be remembered that the arbitrators are not the final judges in the case. The award has substantially the force of a verdict of a

jury; and does not become final until confirmed by the International Court.

Special arbitration providing for a finding of facts reserving the law to be settled by the International Court (of which any soverign is a quorum) would be less liable to danger from fraud or perversion. This phase of forensic procedure, however, seems to be practically involved in the Process by Commission, discussed in the next section.

Neither is it the business of the arbitrators to compromise a case; but rather to decide the legal status of the parties at the date of the final submission of the cause to them. Although there is no doubt that both arbitrators and jurors are often compelled to make concessions to each other's views in order to reach an agreement—the courts upholding such procedure upon the principle that it is wise for jurors to enlighten their consciences, by a comparison of views. It should be further noted that the making of the agreement to arbitrate is a ministerial act and is the exclusive prerogative of the treaty-making power in a nation. But the confirmation or rejection of the award is a judicial act and is a function that devolves exclusively on the International Court. The President of the United States as a member of this court, in his action on the award, acts independently of the Senate and is answerable only to his own judicial conscience; and if no other Sovereign-Judge takes part in the case his decision is final; for as already seen, in Sec. 11, one International Judge is sufficient to constitute a quorum of the International Court. If only two of

the International Judges take part in the case, and they disagree, the award would fail for lack of confirmation. If more than two judges sit in the case the majority, as seen in Sec. 12, must necessarily rule.

As to whether then any given award stands or falls depends upon the consensus of international opinion. The informality of international review, however, is so great as to obscure the judical quality involved in the procedure and as suggested in Sec. 14, makes it difficult to believe that there is any international law or court in existence.

The writer, however, is persuaded of the truth of four propositions: (1) International Law exists; (2) The International Court exists; (3) The sovereigns of all nations constitute the International Court exofficii; (4) Arbitrators are ancillary to the Court; and hence the award is not necessarily final, but may be rejected, whenever the International Court (one or more Sovereign-Judges sitting in the case) finds it the product of either accident, fraud, mistake or duress.

SEC. 23. *The Process by Commission.*—The Venezuelan Commission was an important development in international procedure.

For reasons involved in the then mystery of British administration that government was slow to consider the subject of arbitration of the boundary line in controversy. As the only wise expedient left open to him, President Cleveland took action in the matter by the appointment of a Commission to report to him the facts and law of the case. The de-

sign of this ancillary proceeding was to inform his judical conscience in a matter pertaining to the exercise of his international police-power.

The ground upon which international jurisdiction arose was that anarchy prevailed in all the region affected by the boundary dispute, and the right of international intervention in that territory accordingly existed for the purpose of securing a settlement of the controversy.

The appointment of this Commission stimulated the British government to such consideration of the matter as to finally lead it to agree to arbitration through the processes of The Hague Tribunal, and pending the work of the Commission the case was there submitted and disposed of, and the Commission dissolved without completing its investigation.

Some have thought that this Commission was *ex parte* in character. But this seems to be a mistaken conception of the nature of the proceeding.

It seems rather as above suggested, that President Cleveland was acting in his judical capacity as an international judge *ex officio* in the vicinage in the exercise of international police-power.

As explained in Sec. 11, the International Court is always in session and any one judge constitutes a quorum. Any other international judge had the right to intervene in the case. But in the absence of any such intervention President Cleveland to all intents and purposes constituted the International Court. He might have invited England to unite with him in the selection of the Commis-

sion and probably would have done so if that government had signified any desire to sit in the case.

The creation of the Commission was the judicial act of the highest court in the world, one of the judges thereof sitting in the case. It was the initiation in a judicial way of the final settlement of a grave international controversy, which in former civilizations would have led to war.

It is doubtful whether President Cleveland and his able legal adviser, Secretary Olney, fully appreciated the judicial quality inhering in their procedure. International jurisprudence was then far more rudimentary than as at present developed. Up to that time it lacked this valuable precedent to guide the way; and the many other precedents that have since occurred.

We can now see that the coral reef was then very nearly above the waves and those two indefatigable workers possibly builded wiser than they knew. It is ours to admire this product of the ages and wonder as we trace the divine hand of the Master-builder of modern international jurisprudence. Rather than deny its existence let us enjoy its fruits.

SEC. 24. *Distinction Between Arbitration and Commission.*—The award in arbitration, as explained in Sec. 22, has the force of a verdict of a jury and cannot be impeached except for accident, fraud, mistake or duress. But the report of a Commission is analogous to a report of a master in chancery, which does not prevent, but rather sim-

plifies and facilitates investigation *de novo,* by the court.

The Venezuela Commission referred to in the last section was merely designed to enlighten the conscience of the President as to the law and facts of the case, and was not intended to be as conclusive as the verdict of a jury or award in arbitration. It was unreservedly subject to his judicial review and approval. He could set the report aside either in whole or in part, or confirm it in whole or in part; or revise it as he should see proper; and when his judicial conscience should be finally enlightened to his satisfaction he would reach a conclusion as to the facts of the case and proceed accordingly.

If it was purely a ministerial matter in which he was engaged he would not have needed the aid of a learned Commission, or any such form of juridical circumspection. The belief of the writer is that the Commission was a judicial body, but subject entirely to the control of the appointing power—differing in this respect from arbitration, the award in which can only be assailed on the grounds above mentioned. In evolving this Process by Commission President Cleveland reflected honor on his administration; for it is a most effective method, and is always available and seems destined to supersede arbitration, which is less expeditious and less elastic.

So far as the United States is concerned, one especial advantage of Process by Commission over Arbitration is that the latter cannot be resorted to except by the concurrence of the senatorial branch

of our treaty-making power. But the President can create the former on his own motion at any time. And he can also unite with other sovereigns in the appointment of a Joint Commission to advise the international conscience in any given case, without infringing on the prerogative of the Senate.

The North Sea Commission is the latest and most valuable precedent along this line. Others will occur in the course of time; and as the years come and go international practice will crystalize around this method of procedure.

## *CHAPTER V.*

### *THE CASE IN MANCHURIA.*

SEC. 25. *Statement of the Case.*—For a few years prior to 1885, the Chinese put forward a claim to the exclusive control of the Corean Peninsula. The Japanese, however, regarded Corea as under international jurisdiction, and claimed a voice in its control; and this claim was similar to and as well founded as our Monroe Doctrine.

Finally, April 18, 1885, a treaty between China and Japan was signed by which both nations agreed to recall their troops from the peninsula and to immediately inform the other if either should conclude to send troops to Corea.

In 1894, after nearly ten years of peace, a rebellion occurred in the peninsula against which the nominal local government was unable to contend. International jurisdiction at once revived and both China and Japan sent armed forces ostensibly at least to supress the insurrection. Japan, however, in disregard of the rights of China as an international intervenor, took the King of Corea into custody and required him to put his seal to a document requiring the military forces of China to leave the peninsula.

Several encounters followed between the Chinese military and naval forces and those of Japan.

Among others the Japanese sunk a Chinese transport, and 1,200 soldiers were drowned.

Finally, August 1, 1894, both nations issued declarations of war; in the course of which in the ensuing eight months the Japanese were invariably successful and China sued for peace, and a treaty between these belligerents was finally concluded and ratified. Among the terms of this treaty, there was granted to Japan, Port Arthur, a naval fortress captured from China, and an indemnity of one hundred and seventy million dollars.

Russia, however, was planning to extend a branch of her Siberian railway south to the ice-free port of Port Arthur. The Czar accordingly procured France and Germany to unite with Russia in a demand that Japan should accept an additional indemnity of thirty million dollars, and release all claim to Port Arthur. The Mikado reluctantly yielded to this demand and evacuated Port Arthur.

Subsequently, the Boxer insurrection occurred in China, and the local government was practically set at naught. Russia, England, Germany, France, Japan and the United States intervened and restored the tottering Chinese dynasty.

In recognition of the services of Russia in both these wars, China granted the Czar the right to build a railway to Port Arthur, and dominion over the city and practically of all Manchuria. The railway was accordingly built, constituting an important link in the earth's girdle, six thousand miles from Port Arthur to St. Petersburg; and not only so but the fortifications at Port Arthur were greatly

strengthened and a strong naval squadron was anchored in that harbor. During the years following, the Japanese watched these Russian maneuvers and of course wondered at them, and seemed to have reached the conclusion that the Russian power in Manchuria and the east must be broken or Japan must perish; and quietly prepared themselves for the inevitable momentous struggle. When they were ready for the struggle, they found a pretext for war in the unsettled condition of the boundary line between Manchuria and Corea.

The unsettled boundary line exposed Manchuria to international jurisdiction and hence in rushing their soldiers into that region the Japanese were not guilty of invasion. It was simply a case of armed intervention in a territory in which Japan as an International Intervenor had as much right as Russia. If Russia had had her fences up, if the boundary line between Manchuria and Corea had been clearly defined and established, then Japan in crossing into Manchuria would have been an invader, and amenable to the International Police-Power for such a breach of international peace.

It follows, therefore, that in his military operations the Mikado has not exceeded his international jurisdiction.

SEC. 26. *Japan's Illegal Naval Assault.*— While as seen in the last section, the military operations of the Mikado have been within his international jurisdiction yet it must be confessed that the first naval assault upon the Russian squadron in the Port Arthur harbor cannot be so easily vindicated.

We have already seen, in Sec. 10, that the sea is the world's highway, and all nations are entitled to use and enjoyment thereof.

This assault then involved a previous judgment by the Mikado, that the Czar had forfeited his right to the use and enjoyment of the sea; and not only so, but his throne also; for, as seen in Sec. 10, the sea is essential to national life, and sovereignty, cut off from the use and enjoyment of the sea, must perish.

Now, in this procedure, the Mikado violated two plain legal principles: (1) All jurisprudence of which we have any knowledge requires that the accused shall have notice of the proceeding against him. No notice was given the Czar, no opportunity to show why his fleet should not be destroyed.

The judgment of the Mikado that the Czar's fleet was not entitled to the use and enjoyment of the sea was an exceedingly grave adjudication. If this judgment of forfeiture, without notice, warning or condemnation procedure and without opportunity of appealing to the consensus of international opinion is justified by the present state of evolution of international law, it would seem that we should either reject the idea of international police-power, or else the international Sovereign-Judges, by conference, commission or treaty should devise some rules of international procedure before forfeiture of sovereign-right to the use and enjoyment of the sea.

The writer expresses no opinion as to the guilt or innocence of the Czar, at that time. That sub-

ject is not within the purview of the present discussion. The present controversy is with the Japanese interpretation of international procedure. It impresses one with the thought that the Mikado does not consider that there is any due process in international police-power and in fact all international law is a myth. And if this is true, then the Mikado is an international outlaw. For he cannot appeal to the law and at the same time deny by his conduct the existence of the law.

(2) The Mikado did not have the judgment of the International Court in his favor. It is true, as already seen in Sec. 11, that the International Court is always in session and any one Sovereign-Judge constitutes a quorum; and the Mikado had his own sovereign-judgment in his favor. But the Czar is also one of the Sovereign-Judges and it must be conclusively presumed that his judgment is against the theory of forfeiture of his throne; for the very fact that he occupies it is an affirmation before the world of his belief in his right to his throne. We have then, in this Manchuria case the Mikado's vote against the Czar but made nugatory by the Czar's implied vote for himself.

The Mikado's case against the Czar then must fail, unless some other sovereign-power will intervene in the case and decide against the Czar. And thus one by one the opinion of all the Sovereign-Judges might be brought into the case; and as shown in Sec. 12, the consensus of opinion of the majority of these judges, taking part in this case would be an international adjudication of the mat-

ter. There is no evidence that any sovereign except the Mikado had adjudged that the Czar had forfeited his right to the use and enjoyment of the sea and to his throne. There is some surmise that the British government was in secret sympathy with Japan; but whether this is true or not, formal expression has never been given to it. And therefore, so far as we have any knowledge, the Mikado had no International Judgment against the Czar, and his destruction of the Russian squadron was international usurpation and clear breach of the peace of the sea and he is undoubtedly amenable to the international police-power for that assault.

There seems to be no escape from this conclusion; unless we take the theory that international law is a myth and dream of enthusiasts and international chaos reigns. And if all outside of national limits is in a chaotic condition how puerile is the constant reference of diplomats and sovereigns to international law in their intercourse with each other and how elusive and delusive is the international police-power, of which President Roosevelt speaks in his last annual message, already referred to; and how inconsistent is Japan's constant appeal to international law, while at the same time denying its existence.

SEC. 27. *Recapitulation of Japan's Breaches of International Peace.*—From the last two sections we are able to discern three instances of violation of international law upon the part of the emperor of Japan: (1) The disregard of the principle of international courtesy in seeking to exclude China from

her rightful voice as one of the International Intervenors in Corea in 1894. Japan thus moved the dial of progress back to the idolatrous civilization of Greece and Rome; under and by virtue of which Alexander the Great wept because he had no more worlds to conquer and Rome became the mistress of the world, the only nation on the globe. On the contrary the civilization of the future will courteously regard the rights of each and every International Intervenor to a voice in the settlement of the given international case; and thus war between nations will be avoided. (2) Coming down ten years later, we find this same idolatrous Japan assailing and destroying the Russian squadron in the Port Arthur harbor without any notice or warning whatever. If such a procedure is justifiable, it can only be upon the idea that international chaos reigns. Russia should have had her "day in court," if international jurisprudence exists. This she was denied. The Mikado certainly was not proceeding in any judicial capacity in that matter. And if he was not, then he exceeded his jurisdiction; for he has no jurisdiction in the sea, except as one of the international judges, in the exercise of international police-power; and under that power would any international jurist seriously claim that property and human life can be destroyed without notice or opportunity to show cause to the contrary?

(3) The Mikado had no international judgment condemning the Russian squadron to destruction. His assault was so unexpected that the international world cannot be deemed to have concurred or acquiesced in the same.

Our sudden assault upon the Spanish squadron was preceded by reciprocal declarations of war and proclamations of neutrality; which were tantamount to the international outlawry of both Spain and the United States, and implied international consent to the destruction of lives and property of both belligerents. But the Japanese assault preceded all declarations of war and all proclamations of neutrality. So that Japan had nothing upon which to found international consent to the destruction of the Russian squadron.

The only point in common between the two cases is the suddenness of the assault and electrification of the world. They were both startling, perhaps equally so. But beyond this the Japanese assault is utterly without precedent in modern warfare. To find its counterpart, we must go back to the siege and destruction of Troy or Carthage in ancient days, when international law was without form and void.

But in these modern days, dry land has appeared. International promontories are in sight and international light-houses are searching the sea, with the searchlight of truth. Now, can idolatrous Japan swing our Christian civilization back to that ancient chaotic period?

SEC. 28. *The Mistake of the Mikado.*—If instead of beginning hostilities, the Mikado had invited all nations or at least the leading Powers to unite with him in the formation of a Joint Advisory Commission to report to the Powers the facts and the law applicable to the situation in Manchuria, it

is morally certain the final result of the inquiry would have secured to Russia merely a railway zone down through Manchuria to Port Arthur; and Japan would have been granted control of all the territory east of that zone and China all west thereof. At least the prospect of such a consummation was worthy of an effort along that line. If the world had dealt treacherously or unfairly with Japan, it would have been time enough then for Japan to have become an Ishmaelite among nations, with every nation's hand against it and its hand against every nation. But no such result would have happened. For along with the evolution of international jurisprudence, there has come into the world an international conscience that seeks to know and declare the truth; and this would have been done in this case. The President of the United States, one of the final International Judges, could never be a party to a corrupt decree; no more than the Chief Justice of the United States Supreme Court. Judicial integrity has come into modern civilization and has come to stay; and what is said of one of these International Judges, may be said of all, including the Mikado and the Czar. All of them can be relied on to finally declare the facts and law of a case as they understand them.

It is the belief of the writer that the Russo-Japanese war might have been averted if the Mikado had resorted to this Process by Commission. No sovereign believing in international police-power could refuse to appoint a member of such a Commission.

Russia could have gracefully bowed to the consensus of international opinion, as finally established by the aid of this process. But Russian pride and honor rebelled against the dictation and usurpation of the Mikado, who is merely a co-ordinate Sovereign-Judge of international space, no more, no less.

War between nations will never disappear from this planet until the truth is generally recognized that no one nation has the right to dictate to another nation. In the event of disagreement, the only and true remedy is to secure the consensus of international opinion, the court of last resort in all international matters; and the best known method of initiating a speedy and honorable settlement is the Process by Commission.

As we witness the consequence of the mistake of the Mikado, in the awful travail in Manchuria, the vast sacrifice of blood and treasure, should we not well and carefully consider this lesson?

And how much better would an Annual General Assembly or Conference of Sovereigns be to which such a case or other international questions could be formally presented, considered and decided. How it would secure every righteous sovereignty forever and establish peace and prosperity throughout the world!

SEC. 28. *The Mistake of the Czar.*—Up to the time of the Russian counter declaration of war against Japan, the Czar had the better international position. For as already seen the Mikado had usurped authority and condemned his fleet to destruction without due process of law; and the Czar

was accordingly in an excellent position to invoke the protection of the International Police-Power in his use and enjoyment of the sea and right to his throne, and ask the appointment of a Manchurian Commission. If this course had been pursued, how easily all matters could have been honorably and amicably settled.

But unfortunately the Czar instead of issuing a simple declaration of purpose to confine his military and naval operations to the exercise of his national and international police-powers, suffered himself to be betrayed into a declaration of war of invasion of Japan to wreak vengeance an hundred fold. By this expressed purpose he forfeited his right to the use and enjoyment of the sea; for as already seen a war of invasion involves a plain solecism and the use of the sea in furtherance of such a war constitutes a breach of international peace. When we remember that logic is of the essence of the divine nature, is it any wonder that the Czar along the line of his announced purpose of invasion and reprisal has met with such disaster on land and sea, notwithstanding his prayers for aid?

"Dearly beloved, avenge not yourselves; * * * for it is written vengeance is mine; I will repay, saith the Lord."

The Almighty has reserved vengeance unto Himself. He is manifestly the only Judge qualified to administer vengeance; for He alone knows all the facts of any given case. Let us beware of infringing on the divine jurisdiction in such matters. And

not only so, but to save the world from the just Mosaic principle of *lex talionis,* He gave his Son Jesus Christ the Righteous, as a sacrifice for sin and ordained in the Sermon on the Mount that the old law of an eye for an eye, and a tooth for a tooth, should no longer prevail, through the efficacy of the cross of Christ for the sinner.

If then instead of harboring the purpose of invasion and vengeance, the Czar had formed and announced the purpose to confine his military and naval operations to the exercise of his national and international police-powers, and had impeached the Mikado, proposing to intervene in Japan and remove him from his throne, as a disturber of the peace of the sea, and establish there a government that would respect the peace of the sea, he would then have shown a courteous recognition of the international jurisdiction in the case to settle and adjust the whole matter. His right to the use and enjoyment of the sea would then have been guaranteed by the International Police-Power instead of the condition of an international outcast, to which he was reduced by proclamations of neutrality. Such proclamations can never be issued against a sovereignty engaged only in the exercise of its national and international police-powers.

SEC. 29. *In Pari Delicto.*—It is possible that before the Russo-Japanese controversy is finally settled an International Commission will be developed to consider at least the respective claims of the belligerents to indemnity. It is probable that all other questions can be settled by the belligerents them-

selves. Such a Commission, if it shall ever be organized, will find it difficult to allow either the Mikado or the Czar any indemnity. For the reason, as already seen, neither Russia nor Japan come into court with clean hands. The Mikado was guilty of a breach of international peace in the first naval assault, without due process of law. And the Czar was equally guilty, when he issued his declaration of war of invasion of Japan. They are then *in pari delicto;* and both became international outcasts, by proclamations of neutrality issued by all other nations. If the Czar would confess his breach of international peace by the proclamation of war of invasion and reprisal, and proclaim his purpose to confine his military and naval operations to the exercise of his national and international police-powers, he could at once take shelter under the International Police-Power, inhering in all nations combined, from the Japanese claim for indemnity and again secure the right to the use and enjoyment of the sea. If, however, as a *peace-maker* he sees proper to deliver to Japan a reasonable sum as indemnity, he not only will prove himself a glorious Monarch, but will be called a child of God; for this beatitude is promised to the peace-maker. Such an exemplified exegesis of Christianity would be a mighty triumph of the Prince of Peace; in which event the Mikado might need the prayers of Christendom; for the Japanese, having no living God to worship, would probably pay divine honor to their Emperor; which the history of the past shows to be an exceedingly destructive form of delusion.

The prayer of Christendom should be that Japan may be brought into the fold of the Great Shepherd.

The crucified and risen Christ will yet in some way be glorified through this awful Russo-Japanese travail. Somewhere in this case we may expect the King of kings and Lord of lords to reveal His hand.

## *CHAPTER VI.*

### *THE SHEDDING OF BLOOD.*

SEC. 30. *The Blood of the Soldier.*—The reader is perhaps ready to agree with the writer in the expectation that war between nations will disappear from this planet. We cannot, however, expect that the avocation of the soldier will cease at the same time; for the exigencies of the police-power, both national and international, will possibly require armies and navies for an indefinite period.

The heart of man seems to require the shedding of blood. This faculty of the soul feeds itself upon the blood of the bull fight—matador or beast ---in Spain; and the blood of the prize fight and other forms of bloody sport or pastime in the United States.

The Roman feast was gladitorial blood. The ancient Jews fed on the blood of animals in their religious rites. But it is explained in the epistle to the Hebrews that the blood of animals could not make the comers thereto perfect.

Neither can the various forms of bloody pastime so often seen in these modern days accomplish such perfection.

On the contrary, they tend to a degenerate civilization, exhibiting brigandage and other symptoms of national decay, as in Spain. In fact, the

general prevalence of bloody pastimes in a nation seems to be the precursor of war.

Immediately preceding the outbreak of the war of 1861, our thirst for blood was sharpened by the bloody recitals of the Heenan-Sayres prize fight. The blood of that war, however, obliterated the thirst for prize fighting for an entire generation. In recent years, however, the thirst for bloody recitals revived and culminated in the legalized prize fight in Nevada.

But while we were drinking at that saturnalia the *Maine* was blown up and we were hurled into the vortex of war.

The blood shed in war is the blood of the first born and is nobler blood than that of vain-glorious prize fighters, and tends to a better civilization, and hence as a choice between them the Almighty seems to abandon nations to war,—soldier manhood being nobler than that developed by bloody sport.

The prize fight July 3, 1905, in the presence of a mixed audience of five thousand men and women, at Reno, Nevada, the bloody recitals of which have just been published broadcast in our metropolitan press, is a *sign of the times.* If this nation must have blood, and will not turn to the blood of Christ, as urged in the next section, how will we escape the vortex of war?

The blood of the yeomanry of the land is more precious than that of vain-glorious prize fighters. If we reject the blood and peace of Christ, will not God feed us on the next best and most available blood?

Shall we not profit by the lessons of the past?

SEC. 31. *The Blood of Christ.*—The greatest force conducing to the world's peace is the blood of Christ. This alone can make its votaries perfect. The sacrifice of the soldier can make men free, but efficacy unto holiness has never been claimed for it. This is recognized in the Battle Hymn of the Republic: "As Christ died to make men holy, let us die to make men free." In fact, civil liberty springs out of religious liberty. "Where the Spirit of the Lord is, there is liberty." Our forefathers came to America originally in search of religious liberty and out of their christian manhood there grew a love of civil liberty, and these two great forces have always permeated our civilization. As Christ had died for them so they gave their lives for their country.

In the blood of Christ there is salvation from all other forms of blood-shed. "He was wounded for our transgressions, bruised for our iniquities, the chastisement of our peace was upon him, and by his stripes we are healed."

In proportion as we lose sight of the cross, God will abandon us to other forms of violence—first bloody pastime, then war.

Pending the transition of this world from bloody pastime to an absorbing interest in the shed blood and broken body of Christ the baptism of at least internecine war seems inevitable. Except for divine grace civil war can break out in the United States at any time. One of the chief dangers that menances us is the strike, which breeds mobs, law-

lessness and exposes us to international intervention, if foreigners should happen to be injured in person or property in such cases. How easily blood flows indiscriminately in these contests between capital and labor. The insurrection spark may start the conflagration at any time. The blood of the soldier may do in such cases, but the blood of Christ is the best remedy. It will save the converted capitalist from the spirit of extortion, greed and oppression, and labor from turbulence and rebellion. Let us then ponder the great truth of the human appetite for bloody recitals and not quench it, but feed it on the blood of the Redeemer, and through the knowledge of Him develop true civilization and peace, not only at home, but in sister commonwealths.

When we hear Christ crucified ourselves, then we can preach Him to the Czar and the Mikado—not as a Nemesis, but as the Saviour of the world by the sacrifice of Himself.

# PRAYER.

Our Father, Who art in heaven, we thank Thee that Thou hast taught us to come to Thee, through the merits of our Redeemer. We bless Thee for this salvation for all who truly repent of their sins. Wilt Thou graciously help us to worship Thee in spirit and in truth. Help us to hallow Thy name and serve Thee with reverence and religious veneration.

We praise Thee for the City of the Living God and its inhabitants—the spirits of just men made perfect; the innumerable company of angels; the general assembly of the church of the First Born; God, the Judge of all; and Jesus, the Mediator of the new covenant whose blood speaketh better things than that of Abel.

We bless Thee for the revelation of Thy divine attributes, wisdom, love, mercy and omnipotence; for Thy Word and the prosperity thereof; for the Church of Christ and its wonderful growth and hallowed influence; for the sun, moon and stars that declare Thy glory; for this planet and all the blessings thereof; for our country, and state, and homes, and all the prosperity thereof. We believe that we live and move and have our being in an omnipresent God and that He is a Rewarder of them that diligently seek Him, and that Thou art able to do for us more than we ask or think if Thou wilt.

We beseech Thee through the merits of our

crucified and risen Saviour to heal the unhappy controversy in Manchuria and to hasten the prophetic time when nation shall not make war against nation; baptize us with continued prosperity and peace and save our first-born from the sacrifice of war. Nevertheless, in all these things Thy will and not our wills be done. Help us to live in submission to and harmonization with the divine will.

"Bless the Lord, O my soul, and forget not all His benefits; Who forgiveth all thine iniquities; Who healeth all thy diseases; Who redemeth thy life from destruction; Who crowneth Thee with tender mercies and loving kindness; Who satisfieth thy mouth with good things so thy strength is renewed as the eagle." "O, that men would praise Thee, Lord, for His goodness and mercy and wonderful works to the children of men." Wilt Thou graciously pour out upon us this availing spirit of praise and thankfulness? We thank Thee that Thou hast revealed unto us that praise is comely and well pleasing to Thee. We ask these blessings, not in our own righteousness, but in the righteousness of Thy well beloved Son, Who gave Himself for us. Amen.

THE END.